

Appl. No. 10/050,520,  
Amdt. dated May 30, 2005  
Reply to Office Action of May 24, 2005

### **REMARKS / ARGUMENTS**

By the above amendment, Applicant has rewritten all claims to define the invention more particularly and distinctly to overcome the rejections in the advisory action and define the invention patentably over the prior art.

Applicant requests reconsideration of this rejection, as now applicable to claims 59 to 87 for the following reasons:

#### **Claim Support.**

Support for applicant's revised independent claims 59 f, 72 e and 84 f) can be found in [0018], Fig 1, [0037], [0039] and [0040]. Support for applicant's revised dependent claims 70, 81 and 87 can be found in [0034] and [0059].

#### **With regard to Peterson Jr.**

- (1) The Peterson Jr. device does not meet the applicant's independent claims (59 f, 72 e and 84 f) "and the device attachable to the container such that the entire device preattached to the container can remain attached to the container during the engaged movement of the moveable member from the one selected position to the second one of the selectable positions." and "and the device assemblable such that the preassembled entire device can remain assembled during the engaged movement of the moveable member from the one selected position to the second one of the selectable positions.". At a minimum, the Peterson Jr. device consists of a movable continuous loop (14), a number data element (13) and a framing and masking element (15) arranged concentrically with respect to each other in order to produce an operational device (column 4, lines 1-24). In the entire device preassembled or preattached to a container (FIGS 1 and 2), the masking element covers the movable loop and data element and provides apertures for selectively viewing the covered elements while masking all other inapplicable portions (column 2, line 45). By dropping the masking element in place, only the correct association of the underlying elements is had (column 5, lines 47-48). Peterson Jr. does not disclose any procedure for moving the

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underlying elements (relative to each other) while the preassembled or preattached masking element remains assembled or attached to the container. It is evident from the assembly description and figures, that it is not possible to move the movable member (14), relative to the data element in said preassembled or preattached entire device without first removing (disassembling) or detaching the masking element from the container. The elements underlying the masking element do not constitute the assembled entire Peterson Jr. device and it follows that the entire device is no longer attached to the container. The Peterson Jr. device is therefore not assemblable such that the entire preassembled device can remain assembled during the engaged movement of the moveable member from the one selected position to the second one of the selectable positions. The Peterson Jr. device is also therefore not attachable to the container such that the entire device preattached to the container can remain attached to the container during the engaged movement of the moveable member from the one selected position to the second one of the selectable positions. There is no suggestion in Peterson Jr. that the device could be altered to permit a change in operation, much less to that of the applicant's device. The Peterson Jr. device does not and cannot meet the applicant's claims.

**With regard to Peterson Jr. in view of Trimble-Gomez on dependant claims**

- (2) There is no suggestion in either of the references that they be combined. Even if the references could somehow be combined, their combination does not alter the inability of the combined device to meet the applicant's independent claims (59, 72 and 84). The rewritten dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them patentable over these references.

**With regard to Peterson Jr. in view of Annunziata on dependant claims**

- (3) There is no suggestion in either of the references that they be combined. Even if the references could somehow be combined, their combination does not alter the inability of the combined device to meet the applicant's independent claims (59, 72 and 84). The rewritten dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them patentable over these references.

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- (4) The applicant therefore submits that the references do not meet the applicant's claims and that the references lack any suggestion that they be modified in a manner to meet the claims. The applicant further submits that there is no prior art other than the applicant's which suggests that the references be modified in a manner to meet the claims.
- (5) With regard to the rewritten dependent claims 70, 81 and 87. The rewritten dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them patentable over these references.

**The Novel Physical Features Of The Amended Claims Produce  
New And Unexpected Results And Hence Are Unobvious  
And Patentable Over These References Under § 103.**

Also applicant submits that the novel physical features of the amended claims are also unobvious and hence patentable under § 103 since they produce new and unexpected results over Peterson Jr. in view of Trimble-Gomez and over Peterson Jr. in view of Annunziata. These new and unexpected results are a simpler, and lower cost device than the combined references, and greater likelihood of adoption. The applicant's device uses fewer components than the Peterson Jr. device and does not require a custom container, resulting in cost savings and in greater convenience. The applicant's device also appears easier to operate. Combining the references does not significantly alter the factors accounting for the differences between the Peterson Jr. and applicant devices. The applicant's device is superior to that of Peterson Jr. and to that of the combined reference.

**Conclusion**

For all of the above reasons, applicant submits that the claims are now in proper form, and that the claims all define patentability over the prior art. Therefore the applicant submits that this application is now in condition for allowance, which action is respectfully solicited.

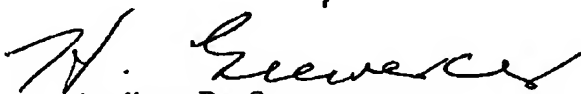
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**Conditional Request For Constructive Assistance**

Applicant has amended the claims of this application so that they are proper and define novel structure which is also unobvious. If, for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very respectfully,

Harry Giewercer

  
-----Applicant Pro Se-----

29 Hyde Park Drive  
Richmond Hill, Ontario Canada L4B 1V2  
Tel. (905) 881-1603; Fax. (905) 889-0854

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I certify that on the date below I will fax this communication, and attachments if any, to Technology Center 2800 of the Patent and Trademark Office at the following central number **(703) 872-9306**.

Date: May 31, 2005 No. of pages: 10

Inventor's Signature:

